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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

FELIX EDUARDO GONZALEZ,

Defendant and Appellant.

E048464

(Super.Ct.No. FVA027970)

OPINION

APPEAL from the Superior Court of San Bernardino County. Eric M. Nakata, Judge. Affirmed.

David K. Ries, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Lilia E. Garcia and Marilyn L. George, Deputy Attorneys General, for Plaintiff and Respondent.

Following a probation revocation hearing, the trial court found that defendant Felix Eduardo Gonzalez violated the terms of his probation by knowingly possessing a

vehicle transmission that was missing a tag showing the vehicle identification number (VIN). (Veh. Code, § 10751, subd. (a).) The trial court thereafter terminated defendant's probation and imposed the previously suspended sentence of four years. Defendant challenges the sufficiency of the evidence to support the revocation of his probation.

FACTUAL AND PROCEDURAL BACKGROUND

Pursuant to a plea agreement, defendant pled guilty on June 15, 2007, to owning or operating a vehicle chop shop (Veh. Code, § 10801) (count 1) and receiving a stolen vehicle or vehicle parts (Pen. Code, § 496d, subd. (a)) (count 2). Defendant was thereafter sentenced in accordance with the plea agreement to a suspended four-year term on count 1 and to a two-year term on count 2, which was stayed pursuant to Penal Code section 654. Defendant was granted probation for a period of 48 months, subject to various terms and conditions, including 180 days in county jail.

A petition to revoke defendant's probation was filed on February 17, 2009, alleging he violated several conditions of his probation, including the break no laws provision in condition No. 2. All of the allegations in the petition arose from a probation compliance search of defendant's residence and storage unit on January 29, 2009.

On February 27, 2009, the court held a probation revocation hearing pursuant to *People v. Vickers* (1972) 8 Cal.3d 451, and found defendant to be in violation of his probation. As a result, defendant's probation was terminated, and he was sentenced on March 27, 2009, to the previously suspended sentence of four years in state prison.

DISCUSSION

Defendant contends the evidence presented at his probation revocation hearing was insufficient to support revocation of his probation for violating Vehicle Code section 10751, subdivision (a), because there was no evidence to establish he actually knew the VIN tag was missing from his transmission. According to defendant, the court improperly presumed his knowledge of the missing VIN tag based on his prior admission of being involved in the operation of a chop shop in violation of Vehicle Code section 10801.¹ However, defendant believes this was not enough to imply knowledge of the missing VIN tag; it only shows he was in some way involved in the operation of a chop shop. It does not show that he personally altered or disassembled vehicles or that he had the level of knowledge required to recognize the absence of a VIN tag on his transmission.

¹ “A ‘chop shop’ is any building, lot, or other premises where any person has been engaged in altering, destroying, disassembling, dismantling, reassembling, or storing any motor vehicle or motor vehicle part known to be illegally obtained by theft, fraud, or conspiracy to defraud, in order to do either of the following: [¶] (a) Alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity, including the vehicle identification number, of a motor vehicle or motor vehicle part, in order to misrepresent the identity of the motor vehicle or motor vehicle part, or to prevent the identification of the motor vehicle or motor vehicle part. [¶] (b) Sell or dispose of the motor vehicle or motor vehicle part.” (Veh. Code, § 250.) Vehicle Code section 10801 is violated by “[a]ny person who knowingly and intentionally owns or operates a chop shop.” To be found guilty of a violation of Vehicle Code section 10801, one need not play a supervisory role or have any control over a “chop shop”; “‘active involvement’ ” in the operation is sufficient. (*People v. Ramirez* (2000) 79 Cal.App.4th 408, 415.)

“Our trial courts are granted great discretion in determining whether to revoke probation. [Citation.]” (*People v. Rodriguez* (1990) 51 Cal.3d 437, 445.) The level of certainty required to support a probation revocation is less than that required to support a criminal conviction. Penal Code section 1203.2, subdivision (a), authorizes probation revocation “if the interests of justice so require and the court, in its judgment, has reason to believe . . . that the [probationer] has violated any of the conditions of his or her probation” Our Supreme Court has interpreted “reason to believe” under Penal Code section 1203.2, subdivision (a), to impose a “preponderance-of-the-evidence” standard of proof. (*Rodriguez*, at p. 446.) A lower threshold is appropriate because “ ‘[r]evocation deprives an individual, not of the absolute liberty to which every citizen is entitled, but only of the conditional liberty properly dependent on observance of special [probation] restrictions.’ ” (*People v. Coleman* (1975) 13 Cal.3d 867, 877, fn. 8.)

An appellate court will not disturb a decision to revoke a defendant’s probation unless it finds the trial court abused its discretion. (*People v. Kelly* (2007) 154 Cal.App.4th 961, 965.) “ ‘[O]nly in a very extreme case should an appellate court interfere with the discretion of the trial court in the matter of denying or revoking probation. . . .’ ” (*People v. Rodriguez, supra*, 51 Cal.3d at p. 443.) “A trial court abuses its discretion by revoking probation if the probationer did not willfully violate the terms and conditions of probation.” (*People v. Galvan* (2007) 155 Cal.App.4th 978, 983.)

“[W]here the trial court was required to resolve conflicting evidence [to determine whether a defendant violated the conditions of his probation], review on appeal is based on the substantial evidence test. Under that standard, our review is limited to the

determination of whether, upon review of the entire record, there is substantial evidence of solid value, contradicted or uncontradicted, which will support the trial court's decision. In that regard, we give great deference to the trial court and resolve all inferences and intendments in favor of the judgment. Similarly, all conflicting evidence will be resolved in favor of the decision.” (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848-849, fns. omitted.)

Vehicle Code section 10751, subdivision (a), provides as follows: “No person shall knowingly buy, sell, offer for sale, receive, or have in his or her possession, any vehicle, or component part thereof, from which any serial or identification number, including, but not limited to, any number used for registration purposes, that is affixed by the manufacturer to the vehicle or component part, in whatever manner deemed proper by the manufacturer, has been removed, defaced, altered, or destroyed, unless the vehicle or component part has attached thereto an identification number assigned or approved by the department in lieu of the manufacturer's number.”

Defendant testified in his own defense and denied knowing the transmission installed on his vehicle was missing a VIN tag. He said he purchased the vehicle over the Internet about one year before the probation search, had never changed the transmission in the vehicle, and had only looked inside the engine compartment to change the oil.

A detective who participated in the probation search of defendant's residence had specialized training in the identification of illegal motor parts and missing VIN numbers. The detective testified that during the probation search he discovered the metal plate displaying the VIN number of defendant's vehicle had been removed from the

transmission. This metal plate is normally attached to the transmission with rivets. The detective said he could see two empty rivet holes where the VIN tag should have been. He also noticed some scratches underneath the spot where the VIN tag should have been.

The detective also offered testimony that was highly relevant to the issue of knowledge. He explained that defendant's vehicle with the VIN tag missing from the transmission was a Honda, and the VIN numbers on this type of vehicle are "very apparent. They're the easiest of all the vehicles to identify the motor number and VIN number on it." He also said the missing VIN tag on the transmission was "immediately apparent from the front of the vehicle when you open the hood."

In addition, the detective testified he had reason to believe defendant was aware of the missing VIN tag based on statements made to him by defendant, as well as a number of other items he observed during the probation search. First, the detective said, "[F]rom my training and experience and the fact that he seems to know his cars from my conversation with him, it would be difficult for me to believe that he had no idea something was missing on that car. It's very visible. It isn't something that's hidden underneath like a hidden VIN or anything else. It's extremely visible." He also noted there was a stripped-down Honda engine in defendant's storage unit, as well as "numerous mechanical parts inside the garage, numerous alterations to the motor," and other modifications to the exterior of the vehicle.

In reaching its decision, the trial court found defendant's prior admission of being involved in the operation of a chop shop in violation of Vehicle Code section 10801 indicated he "possesses knowledge beyond that of the average person." As a result, the

court said it “would have to be blind to say that this individual doesn’t possess that knowledge because he has that prior conviction.” We cannot disagree with the trial court’s point of view. From the totality of the evidence presented at the hearing, as well as defendant’s prior admission of being involved in the operation of a chop shop in violation of Vehicle Code section 10801, the trial court could reasonably infer defendant knew about the missing VIN tag on the transmission in his vehicle. Together, this evidence is substantial enough to support the trial court’s conclusion defendant violated the break no laws condition of his probation. As a result, we cannot conclude the trial court abused its discretion in deciding to revoke defendant’s probation.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

RICHLI
J.

KING
J.